

AMENDED IN SENATE APRIL 22, 2002

AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 1383

Introduced by Senator Bowen

February 12, 2002

An act to add Section 17538.35 to the Business and Professions Code, relating to electronic mail.

LEGISLATIVE COUNSEL'S DIGEST

SB 1383, as amended, Bowen. Electronic mail: service providers.

Existing law regulates the sending of unsolicited electronic mail advertisements.

This bill would require an electronic mail service provider, *as defined*, to give a customer notice at least 30 days prior to ~~involuntarily~~ terminating service, unless ~~the provider determines that the customer has violated the terms of his or her contract with the provider~~ *otherwise provided by law or contract*. The bill would authorize a customer to bring an action in any court of competent jurisdiction against an electronic mail service provider that violates these provisions for either actual damages or liquidated damages of \$50. *The bill would provide that it supersedes and preempts all local agency provisions regarding notice of electronic mail termination by providers of electronic mail service.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17538.35 is added to the Business and Professions Code, to read:

17538.35. (a) ~~Any~~ *Unless otherwise permitted by law or contract, any provider of electronic mail service shall provide a* each customer with notice at least 30 days before ~~involuntarily~~ terminating the customer's service, ~~unless the provider determines that the customer has violated the terms of his or her contract with the provider.~~

(b) *For purposes of this section, "provider" shall mean the entity that controls the customer's electronic mail address, and not the entity making the underlying network or access available to the provider or the customer.*

(c) *No provider shall be liable under this section solely for a failure to comply with this section in the event a customer's electronic mail service is terminated due to the action or inaction of an entity making the underlying network or access available to the provider or the customer.*

(d) A customer may bring an action in any court of competent jurisdiction against the provider of electronic mail service for a violation of subdivision (a) and may seek either actual damages, or liquidated damages in the amount of fifty dollars (\$50). The provisions of this section shall be in addition to any other remedies or penalties available at law.

(e) *This section supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, cities and counties, municipalities, and other local agencies regarding notice of electronic mail termination by providers of electronic mail service.*